IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

RSA.No. 710 of 2006()

AS.21/2000 of SUB COURT,NEYYATTINKARA
OS.957/1998 of II ADDL.M.C.,NEYYATTINKARA

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APPELLANT/APPELLANT/PLAINTIFF

SUNIL KUMAR,
S/O.RAJAYYAN NADAR, RESIDING AT MANKALA,
THEKKARUKU PUTHEN VEEDU,
THIRUPURATHOOR DESOM, THIRUPURAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.R.GOPAN

RESPONDENTS/RESPONDENT/DEFENDANT

KARUNAKARAN NADAR,
S/O.VELAYUDHAN NADAR,
GOVT. SERVANT, KUZHICHANI PUTHEN VEEDU,
KANJIRAMKULAM DESOM, KANJIRAM KULAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.BLAZE K.JOSE

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO.710 OF 2006

Dated 13th February 2007

J U D G M E N T

Appellant is plaintiff in O.S.957/98 on the file of Munsiff court, Neyyattinkara. Respondent is the defendant. Suit was filed for realisation of the amount due under Ext.A1 promissory note dated 3/1/1996. Respondent denied its execution. As per Ext.A1 Rs.40,000/- was borrowed by respondent and Ext.A1 promissory note was executed for its repayment with interest on demand. Learned Munsiff framed the necessary issues. Appellant was examined as PW1 and attesting witness was examined as PWS.3 and scribe was examined as PW.2. Apart from Ext.A1, Ext.A2 notice and Ext.A3 postal receipt were marked on his side. On the side of respondent Ext.B1 sale deed was marked. Signatures of respondent seen therein were marked as Ext.B1(a) and Ext.B1(b). Defendant was examined as DW1. Learned Munsiff on the evidence disbelieved the evidence of PWs.1 to 3 and held that execution of Ext.A1 promissory note was not proved and

therefore dismissed the suit. Appellant challenged the decree and judgment before Sub court, Neyyattinkara in A.S.21/2000. Learned Sub Judge reappreciated the evidence and confirmed the finding of learned Munsiff and dismissed the suit. This second appeal is filed challenging the concurrent findings of learned Munsiff and learned Sub Judge.

2. Learned counsel appearing for appellant was heard. Arguments of learned counsel appearing for appellant relying on the decision of Apex court and this court was that when primary evidence was adduced by appellant, courts below is not competent to discard that evidence and enter a finding on comparing the signatures alone. It was argued that there is no reason to disbelieve the evidence of PWs.1 to 3 and therefore execution of Ext.A1 promissory note was proved and appellant is entitled to the decree sought for.

3. When execution of promissory note is denied by respondent, burden is on the appellant to establish its execution. Learned Munsiff and learned Sub Judge appreciated the evidence of PW1, the appellant, PW3 the

scribe and PW2 the attesting witness to Ext.A1 promissory note. Learned Munsiff disbelieved the evidence of Pws.1 to 3 with regard to the execution. Learned Sub Judge reappreciated the evidence and concurred with the findings. Reappreciation of evidence cannot be interfered in exercise of the powers under Section 100 of Code of Civil Procedure. Learned Munsiff and learned Sub Judge found that Ext.A1 promissory note contains thumb impression of the alleged executant. When execution of the promissory note was denied, appellant could have sent the promissory note to an expert to get the opinion on the disputed thumb impression seen in Ext.A1. Even if it is taken that opinion on comparing signature can only be an opinion evidence, as far as thumb impression is concerned, it is almost conclusive. No two persons will have the same thumb impression. In such circumstances, when appellant could have positively established that the thumb impression seen in Ext.A1 is that of appellant by the report of an expert and he did not attempt to establish that fact and when learned

Munsiff and learned Sub Judge on the evidence found that evidence of Pws.1 to 3 cannot be relied on, I do not find any reason to interfere with findings of courts below. No substantial question of law is involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.